

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 05, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANDRES MESA GARCIA,

Plaintiff,

v.

KRISTY RINIKER,

Defendant.

No. 1:24-CV-03140-ACE

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

ECF No. 5

BEFORE THE COURT is Defendant's Motion to Dismiss.¹ ECF No. 5. Plaintiff is proceeding *pro se*; Defendant is represented by Assistant United States Attorney Timothy M. Durkin. This matter was submitted for consideration without oral argument.

BACKGROUND

Plaintiff brought this lawsuit against Dr. Kristy Riniker, M.D., in the Small Claims Division of the Yakima County District Court on April 4, 2024. ECF No. 1-1 at 5. Plaintiff's complaint alleges Dr. Riniker, a public health care provider

¹Plaintiff filed no response to Defendant's dispositive motion. *See* LCivR 7(e) ("The failure to comply with the requirements of LCivR 7(b) or (c) may be deemed consent to the entry of an order adverse to the party who violates these rules.").

1 and employee of the Yakima Valley Farm Workers Clinic (“YVFWC”), a federally
 2 assisted public health service facility, “prescribed me medicine that was killing me.
 3 The memorial Hospital doctor told me that I should not be taking the medication &
 4 that much of what was prescribed to me. The doctor took the medicine away from
 5 me because it was dangerous for me.” ECF No. 1-1 at 5. Although not specified
 6 in the complaint, the YVFWC advised that the alleged dates of Plaintiff’s care
 7 occurred sometime before November 25, 2022. ECF No. 5 at 2. Plaintiff’s state
 8 court medical negligence suit was removed to this Court pursuant to the Federal
 9 Supported Health Center Assistance Act, 42 U.S.C. § 233, and the Federal Tort
 10 Claims Act (“FTCA”), 28 U.S.C. §§ 1342, 1346(a), 1346(b), 2679.²

11 DISCUSSION

12 A. Standard of Review

13 Defendant’s motion to dismiss pursuant to Federal Rule of Civil Procedure
 14 12(b)(1) tests whether the Court has subject matter jurisdiction to hear the claims
 15 asserted by Plaintiff. A complaint must be dismissed under Rule 12(b)(1) if,
 16 considering all allegations in the light most favorable to Plaintiff, the action: (1)
 17 does not arise under the Constitution, laws, or treaties of the United States, or does
 18 not fall within one of the other enumerated categories of Article III, Section 2, of
 19 the Constitution; (2) is not a case or controversy within the meaning of the
 20 Constitution; or (3) is not one described by any jurisdictional statute. *Baker v.*
 21 *Carr*, 369 U.S. 186, 198 (1962); *D.G. Rung Indus., Inc. v. Tinnerman*, 626 F.Supp.
 22 1062, 1063 (W.D. Wash. 1986). The party asserting jurisdiction (here, Plaintiff)
 23 bears the burden of establishing subject matter jurisdiction. *Ass’n of Am. Med.*
 24 *Coll. v. United States*, 217 F.3d 770, 778-779 (9th Cir. 2000); *Kokkonen v.*
 25 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

27 ²The federal district courts provide exclusive jurisdiction and venue for
 28 plaintiffs who are asserting FTCA claims.

1 **B. Analysis**

2 **1. Failure to Exhaust Administrative Remedies**

3 Defendant first argues that since Plaintiff failed to exhaust administrative
4 remedies, a prerequisite for establishing subject matter jurisdiction, the Court lacks
5 jurisdiction. ECF No. 5 at 4-5.

6 A FTCA action “shall not be instituted” against the United States unless the
7 claimant first presents the claim to the “appropriate Federal agency” and the claim
8 is denied or the agency fails to make a final disposition of the claim within six
9 months. 28 U.S.C. § 2675(a); *McNeil v. United States*, 508 U.S. 106, 113 (1993)
10 (“The [FTCA] bars claimants from bringing suit in federal court until they have
11 exhausted their administrative remedies.”) “The claim requirement of § 2675(a) is
12 a jurisdictional limitation.” *Id.*; *Meridian Intern. Logistics, Inc. v. United States*,
13 939 F.2d 740, 743 (1991). The FTCA, once jurisdictional prerequisites are
14 satisfied, “vests the federal District Courts with exclusive jurisdiction over suits
15 arising from the negligence of Government employees.” *Jerves v. United States*,
16 966 F.2d 517, 518 (9th Cir. 1992).

17 Here, no evidence has been provided demonstrating Plaintiff filed a FTCA
18 administrative claim prior to filing his lawsuit in Yakima County District Court.
19 As indicated above, Plaintiff filed no response or otherwise objected to
20 Defendant’s argument that Plaintiff has failed to exhaust his administrative
21 remedies in this matter. Since it appears Plaintiff failed to exhaust his FTCA
22 administrative remedies before filing his suit against Dr. Rinker, the Court finds it
23 lacks subject matter jurisdiction over Plaintiff’s medical negligence claims and
24 dismissal is appropriate.

25 **2. Statute of Limitations**

26 Defendant additionally asserts Plaintiff’s claims are barred by the FTCA’s
27 two-year claim filing requirement. ECF No. 5 at 6-7.

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1 It is well settled that the United States has sovereign immunity and remains
2 immune from suit absent a specific waiver or consent. *United States v. Mitchell*,
3 445 U.S. 535, 538 (1980). In enacting the FTCA, Congress provided a limited
4 waiver of immunity, specifically allowing individuals to sue the government “for
5 injury or loss of property, or personal injury or death caused by the negligent or
6 wrongful act or omission of any employee of the Government while acting within
7 the scope of his office or employment.” 28 U.S.C. § 1346(b). But such a claim is
8 “forever barred unless it is presented in writing to the appropriate Federal agency
9 within two years after such claim accrues.” 28 U.S.C. § 2401(b).

10 Generally, the FTCA’s statute of limitations begins to run on the date of the
11 injury. *United States v. Kubrick*, 444 U.S. 111, 120 (1979). Accrual of a claim
12 does not “wait awareness by a plaintiff that his injury has been negligently
13 inflicted.” *Id.* at 123. In a medical malpractice case under the FTCA, the Ninth
14 Circuit explains “a claim accrues when the plaintiff discovers, or in the exercise of
15 reasonable diligence should have discovered, the injury and its cause.” *Landreth*
16 *by and Through Ore v. United States*, 850 F.2d 532, 533 (9th Cir. 1988) (citing
17 *Kubrick*, 444 U.S. at 120). The cause of an injury is known when the immediate
18 physical cause of the injury is discovered. *Outman v. United States*, 890 F.2d
19 1050, 1051 (9th Cir. 1989); *A.Q.C. ex rel. Castillo v. United States*, 656 F.3d 135,
20 145 (2d Cir. 2011); *Aarteaga v. United States*, 711 F.3d 828, 834 (7th Cir. 2013).

21 Here, the complaint fails to specifically allege an injury date; however, as
22 indicated above, Plaintiff’s care at the YVFWC occurred sometime prior to
23 November 25, 2022. Therefore, more than two years have elapsed since the
24 alleged negligent prescription event occurred. Again, Plaintiff has filed no
25 response or otherwise objected to Defendant’s assertions regarding Plaintiff’s
26 failure to comply with the FTCA’s two-year administrative claim filing
27 requirement.

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1 The Court finds Plaintiff has failed to comply with the FTCA's two-year
2 administrative claim filing requirement. Accordingly, Plaintiff's claims are time
3 barred as well.

4 **C. Conclusion**

5 For the reasons discussed above, dismissal of this action is appropriate under
6 Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.

7 Accordingly, **IT IS HEREBY ORDERED:**

8 1. Defendant's Motion to Dismiss, **ECF No. 5**, is **GRANTED**.

9 2. Plaintiff's Complaint is **DISMISSED WITH PREJUDICE**.

10 **IT IS SO ORDERED.** The District Court Executive is directed to file this
11 Order, provide copies to *pro se* Plaintiff and counsel for Defendant, and **CLOSE**
12 **THE FILE**.

13 DATED February 5, 2025.



A handwritten signature in blue ink, reading "Alexander C. Ekstrom", is written over a horizontal line.

ALEXANDER C. EKSTROM

UNITED STATES MAGISTRATE JUDGE